

FIRST REGULAR SESSION

# SENATE BILL NO. 3

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GIBBONS.

Pre-filed December 1, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

0580S.01I

## AN ACT

To repeal sections 630.005, 630.155, 630.165, 630.167, and 630.755, RSMo, and to enact in lieu thereof fifteen new sections relating to mental health, with penalty provisions.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 630.005, 630.155, 630.165, 630.167, and 630.755, RSMo, are repealed and fifteen new sections enacted in lieu thereof, to be known as sections 565.210, 565.212, 565.214, 630.005, 630.163, 630.165, 630.167, 630.755, 630.925, 630.927, 630.950, 630.975, 630.1100, 630.1102, and 630.1104, to read as follows:

**565.210. 1. A person commits the crime of vulnerable person abuse in the first degree if he or she attempts to kill or knowingly causes or attempts to cause serious physical injury to, a vulnerable person, as defined in section 630.005, RSMo.**

**2. Vulnerable person abuse in the first degree is a class A felony.**

**565.212. 1. A person commits the crime of vulnerable person abuse in the second degree if he or she:**

**(1) Knowingly causes or attempts to cause physical injury to a vulnerable person, as defined in section 630.005, RSMo, by means of a deadly weapon or dangerous instrument; or**

**(2) Recklessly causes serious physical injury to any vulnerable person, as defined in section 630.005, RSMo.**

**2. Vulnerable person abuse in the second degree is a class B felony.**

**565.214. 1. A person commits the crime of vulnerable person**

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

2 **abuse in the third degree if he or she:**

3 (1) **Knowingly causes or attempts to cause physical contact with**  
4 **any vulnerable person as defined in section 630.005, RSMo, knowing**  
5 **the other person will regard the contact as harmful or provocative; or**

6 (2) **Purposely engages in conduct involving more than one**  
7 **incident that causes grave emotional distress to a vulnerable person,**  
8 **as defined in section 630.005, RSMo. The course of conduct shall be**  
9 **such as would cause a reasonable vulnerable person, as defined in**  
10 **section 630.005, RSMo, to suffer substantial emotional distress; or**

11 (3) **Purposely or knowingly places a vulnerable person, as**  
12 **defined in section 630.005, RSMo, in apprehension of immediate**  
13 **physical injury; or**

14 (4) **Intentionally fails to provide care, goods or services to a**  
15 **vulnerable person, as defined in section 630.005, RSMo. The cause of**  
16 **the conduct shall be such as would cause a reasonable vulnerable**  
17 **person, as defined in section 630.005, RSMo, to suffer physical or**  
18 **emotional distress; or**

19 (5) **Knowingly acts or knowingly fails to act in a manner that**  
20 **results in a grave risk to the life, body or health of a vulnerable person,**  
21 **as defined in section 630.005, RSMo.**

22 **2. Vulnerable person abuse in the third degree is a class A**  
23 **misdemeanor.**

630.005. As used in this chapter and chapters 631, 632, and 633, RSMo,  
2 unless the context clearly requires otherwise, the following terms shall mean:

3 (1) "Administrative entity", a provider of specialized services other than  
4 transportation to clients of the department on behalf of a division of the  
5 department;

6 (2) "Alcohol abuse", the use of any alcoholic beverage, which use results  
7 in intoxication or in a psychological or physiological dependency from continued  
8 use, which dependency induces a mental, emotional or physical impairment and  
9 which causes socially dysfunctional behavior;

10 (3) "Chemical restraint", medication administered with the primary intent  
11 of restraining a patient who presents a likelihood of serious physical injury to  
12 himself or others, and not prescribed to treat a person's medical condition;

13 (4) "Client", any person who is placed by the department in a facility or  
14 program licensed and funded by the department or who is a recipient of services

15 from a regional center, as defined in section 633.005, RSMo;

16 (5) "Commission", the state mental health commission;

17 (6) "Consumer", a person:

18 (a) Who qualifies to receive department services; or

19 (b) Who is a parent, child or sibling of a person who receives department  
20 services; or

21 (c) Who has a personal interest in services provided by the department.

22 A person who provides services to persons affected by mental retardation,  
23 developmental disabilities, mental disorders, mental illness, or alcohol or drug  
24 abuse shall not be considered a consumer;

25 (7) "Day program", a place conducted or maintained by any person who  
26 advertises or holds himself out as providing prevention, evaluation, treatment,  
27 habilitation or rehabilitation for persons affected by mental disorders, mental  
28 illness, mental retardation, developmental disabilities or alcohol or drug abuse  
29 for less than the full twenty-four hours comprising each daily period;

30 (8) "Department", the department of mental health of the state of  
31 Missouri;

32 (9) "Developmental disability", a disability:

33 (a) Which is attributable to:

34 a. Mental retardation, cerebral palsy, epilepsy, head injury or autism, or  
35 a learning disability related to a brain dysfunction; or

36 b. Any other mental or physical impairment or combination of mental or  
37 physical impairments; and

38 (b) Is manifested before the person attains age twenty-two; and

39 (c) Is likely to continue indefinitely; and

40 (d) Results in substantial functional limitations in two or more of the  
41 following areas of major life activities:

42 a. Self-care;

43 b. Receptive and expressive language development and use;

44 c. Learning;

45 d. Self-direction;

46 e. Capacity for independent living or economic self-sufficiency;

47 f. Mobility; and

48 (e) Reflects the person's need for a combination and sequence of special,  
49 interdisciplinary, or generic care, habilitation or other services which may be of  
50 lifelong or extended duration and are individually planned and coordinated;

51 (10) "Director", the director of the department of mental health, or his  
52 designee;

53 (11) "Domiciled in Missouri", a permanent connection between an  
54 individual and the state of Missouri, which is more than mere residence in the  
55 state; it may be established by the individual being physically present in Missouri  
56 with the intention to abandon his previous domicile and to remain in Missouri  
57 permanently or indefinitely;

58 (12) "Drug abuse", the use of any drug without compelling medical reason,  
59 which use results in a temporary mental, emotional or physical impairment and  
60 causes socially dysfunctional behavior, or in psychological or physiological  
61 dependency resulting from continued use, which dependency induces a mental,  
62 emotional or physical impairment and causes socially dysfunctional behavior;

63 (13) "Habilitation", a process of treatment, training, care or specialized  
64 attention which seeks to enhance and maximize the mentally retarded or  
65 developmentally disabled person's abilities to cope with the environment and to  
66 live as normally as possible;

67 (14) "Habilitation center", a residential facility operated by the  
68 department and serving only persons who are mentally retarded, including  
69 developmentally disabled;

70 (15) "Head of the facility", the chief administrative officer, or his designee,  
71 of any residential facility;

72 (16) "Head of the program", the chief administrative officer, or his  
73 designee, of any day program;

74 (17) "Individualized habilitation plan", a document which sets forth  
75 habilitation goals and objectives for mentally retarded or developmentally  
76 disabled residents and clients, and which details the habilitation program as  
77 required by law, rules and funding sources;

78 (18) "Individualized rehabilitation plan", a document which sets forth the  
79 care, treatment and rehabilitation goals and objectives for patients and clients  
80 affected by alcohol or drug abuse, and which details the rehabilitation program  
81 as required by law, rules and funding sources;

82 (19) "Individualized treatment plan", a document which sets forth the  
83 care, treatment and rehabilitation goals and objectives for mentally disordered  
84 or mentally ill patients and clients, and which details the treatment program as  
85 required by law, rules and funding sources;

86 (20) "Investigator", an employee or contract agent of the department of

87 mental health who is performing an investigation regarding an allegation of  
88 abuse or neglect or an investigation at the request of the director of the  
89 department of mental health or his designee;

90 (21) "Least restrictive environment", a reasonably available setting or  
91 mental health program where care, treatment, habilitation or rehabilitation is  
92 particularly suited to the level and quality of services necessary to implement a  
93 person's individualized treatment, habilitation or rehabilitation plan and to  
94 enable the person to maximize his functioning potential to participate as freely  
95 as feasible in normal living activities, giving due consideration to potentially  
96 harmful effects on the person and the safety of other facility or program clients  
97 and public safety. For some mentally disordered or mentally retarded persons,  
98 the least restrictive environment may be a facility operated by the department,  
99 a private facility, a supported community living situation, or an alternative  
100 community program designed for persons who are civilly detained for outpatient  
101 treatment or who are conditionally released pursuant to chapter 632, RSMo;

102 (22) "Mental disorder", any organic, mental or emotional impairment  
103 which has substantial adverse effects on a person's cognitive, volitional or  
104 emotional function and which constitutes a substantial impairment in a person's  
105 ability to participate in activities of normal living;

106 (23) "Mental illness", a state of impaired mental processes, which  
107 impairment results in a distortion of a person's capacity to recognize reality due  
108 to hallucinations, delusions, faulty perceptions or alterations of mood, and  
109 interferes with an individual's ability to reason, understand or exercise conscious  
110 control over his actions. The term "mental illness" does not include the following  
111 conditions unless they are accompanied by a mental illness as otherwise defined  
112 in this subdivision:

- 113 (a) Mental retardation, developmental disability or narcolepsy;  
114 (b) Simple intoxication caused by substances such as alcohol or drugs;  
115 (c) Dependence upon or addiction to any substances such as alcohol or  
116 drugs;  
117 (d) Any other disorders such as senility, which are not of an actively  
118 psychotic nature;

119 (24) "Mental retardation", significantly subaverage general intellectual  
120 functioning which:

- 121 (a) Originates before age eighteen; and  
122 (b) Is associated with a significant impairment in adaptive behavior;

- 123 (25) "Minor", any person under the age of eighteen years;
- 124 (26) "Patient", an individual under observation, care, treatment or  
125 rehabilitation by any hospital or other mental health facility or mental health  
126 program pursuant to the provisions of chapter 632, RSMo;
- 127 (27) "Psychosurgery",
- 128 (a) Surgery on the normal brain tissue of an individual not suffering from  
129 physical disease for the purpose of changing or controlling behavior; or
- 130 (b) Surgery on diseased brain tissue of an individual if the sole object of  
131 the surgery is to control, change or affect behavioral disturbances, except seizure  
132 disorders;
- 133 (28) "Rehabilitation", a process of restoration of a person's ability to attain  
134 or maintain normal or optimum health or constructive activity through care,  
135 treatment, training, counseling or specialized attention;
- 136 (29) "Residence", the place where the patient has last generally lodged  
137 prior to admission or, in case of a minor, where his family has so lodged; except,  
138 that admission or detention in any facility of the department shall not be deemed  
139 an absence from the place of residence and shall not constitute a change in  
140 residence;
- 141 (30) "Resident", a person receiving residential services from a facility,  
142 other than mental health facility, operated, funded or licensed by the department;
- 143 (31) "Residential facility", any premises where residential prevention,  
144 evaluation, care, treatment, habilitation or rehabilitation is provided for persons  
145 affected by mental disorders, mental illness, mental retardation, developmental  
146 disabilities or alcohol or drug abuse; except the person's dwelling;
- 147 (32) "Specialized service", an entity which provides prevention, evaluation,  
148 transportation, care, treatment, habilitation or rehabilitation services to persons  
149 affected by mental disorders, mental illness, mental retardation, developmental  
150 disabilities or alcohol or drug abuse;
- 151 (33) "Vendor", a person or entity under contract with the department,  
152 other than as a department employee, who provides services to patients, residents  
153 or clients;
- 154 (34) "Vulnerable person", any person who, because of  
155 developmental disability or mental illness, is unable to protect his or  
156 her own interests or adequately perform or obtain services that are  
157 necessary to meet his or her essential human needs.

630.163. 1. Any person having reasonable cause to suspect that

2 a vulnerable person presents a likelihood of suffering serious physical  
3 harm or is the victim of abuse or neglect shall report such information  
4 to the department.

5 2. The report shall be made orally or in writing. It shall include,  
6 if known:

7 (1) The name, age, and address of the vulnerable person;

8 (2) The name and address of any person responsible for the  
9 vulnerable person's care;

10 (3) The nature and extent of the vulnerable person's condition;  
11 and

12 (4) Other relevant information.

13 3. Reports regarding persons determined not to be vulnerable  
14 persons as defined in section 630.005 shall be referred to the  
15 appropriate state or local authorities.

16 4. The department shall collaborate with the departments of  
17 health and senior services and social services to maintain a statewide  
18 toll free phone number for receipt of reports.

630.165. 1. When any physician, dentist, chiropractor, optometrist,  
2 podiatrist, intern, nurse, medical examiner, social worker, psychologist, minister,  
3 Christian Science practitioner, peace officer, pharmacist, physical therapist,  
4 facility administrator, nurse's aide or orderly in a residential facility, day  
5 program or specialized service operated, funded or licensed by the department or  
6 in a mental health facility or mental health program in which people may be  
7 admitted on a voluntary basis or are civilly detained pursuant to chapter 632,  
8 RSMo, or employee of the department has reasonable cause to believe that a  
9 patient, resident or client of a facility, program or service has been abused or  
10 neglected, he or she shall immediately report or cause a report to be made to the  
11 department or the department of health and senior services, if such facility or  
12 program is licensed pursuant to chapter 197, RSMo.

13 2. The report shall contain the name and address of the residential  
14 facility, day program or specialized service; the name of the patient, resident or  
15 client; information regarding the nature of the abuse or neglect; the name of the  
16 complainant, and any other information which might be helpful in an  
17 investigation.

18 3. Any person required in subsection 1 of this section to report or cause  
19 a report to be made to the department who fails to do so within a reasonable time

20 after the act of abuse or neglect is guilty of [an infraction] **a class A**  
21 **misdemeanor and may be subject to a five hundred dollar fine.**

22 4. In addition to those persons required to report under subsection 1 of  
23 this section, any other person having reasonable cause to believe that a resident  
24 has been abused or neglected may report such information to the department.

25 5. Any person who knowingly files a false report of abuse or neglect is  
26 guilty of a class A misdemeanor.

27 6. Any person having a prior conviction of filing false reports and who  
28 subsequently files a false report of abuse or neglect pursuant to this section or  
29 section 565.188, RSMo, is guilty of a class D felony.

30 **7. Any residential facility, day program, or specialized service**  
31 **operated, funded, or licensed by the department that prevents or**  
32 **discourages a patient, resident, or client, employee, or other person**  
33 **from reporting that a patient, resident, or client of a facility, program,**  
34 **or service has been abused or neglected shall be subject to loss of their**  
35 **license issued pursuant to sections 630.705 to 630.760 and civil fines of**  
36 **up to five thousand dollars for each attempt to prevent or discourage**  
37 **reporting.**

630.167. 1. Upon receipt of a report, the department or its agents,  
2 contractors or vendors or the department of health and senior services, if such  
3 facility or program is licensed pursuant to chapter 197, RSMo, shall initiate an  
4 investigation within twenty-four hours.

5 2. If the investigation indicates possible abuse or neglect of a patient,  
6 resident or client, the investigator shall refer the complaint together with the  
7 investigator's report to the department director for appropriate action. If, during  
8 the investigation or at its completion, the department has reasonable cause to  
9 believe that immediate removal from a facility not operated or funded by the  
10 department is necessary to protect the residents from abuse or neglect, the  
11 department or the local prosecuting attorney may, or the attorney general upon  
12 request of the department shall, file a petition for temporary care and protection  
13 of the residents in a circuit court of competent jurisdiction. The circuit court in  
14 which the petition is filed shall have equitable jurisdiction to issue an ex parte  
15 order granting the department authority for the temporary care and protection  
16 of the resident for a period not to exceed thirty days.

17 3. (1) **Except as otherwise provided in this section,** reports referred  
18 to in section 630.165 and the investigative reports referred to in this section shall



19 be confidential, shall not be deemed a public record, and shall not be subject to  
20 the provisions of section 109.180, RSMo, or chapter 610, RSMo[; except that  
21 complete copies of all such reports shall be open and available]. **Investigative**  
22 **reports pertaining to abuse and neglect shall remain confidential until**  
23 **a final report is complete, subject to the conditions contained in this**  
24 **section. Final reports of substantiated abuse or neglect are open and**  
25 **shall be available for release in accordance with chapter 610,**  
26 **RSMo. The names and all other identifying information in such final**  
27 **substantiated reports, including diagnosis and treatment information**  
28 **about the patient, resident, or client who is the subject of such report,**  
29 **shall be confidential and may only be released to the parent or other**  
30 **guardian of the patient, resident, or client. The names and other**  
31 **descriptive information of the complainant, witnesses, or other persons**  
32 **for whom findings are not made against in the final substantiated**  
33 **report shall be confidential and not deemed a public record. Final**  
34 **reports of unsubstantiated allegations of abuse and neglect shall**  
35 **remain closed records and shall only be released** to the parents or other  
36 guardian of the patient, resident, or client who is the subject of such report, but  
37 the names and any other descriptive information of the complainant or **any** other  
38 person mentioned in the reports shall not be disclosed unless such complainant  
39 or person specifically consents to such disclosure. All reports referred to in this  
40 section shall be admissible in any judicial proceedings or hearing in accordance  
41 with section 36.390, RSMo, or any administrative hearing before the director of  
42 the department of mental health, or the director's designee. All such reports may  
43 be disclosed by the department of mental health to law enforcement officers and  
44 public health officers, but only to the extent necessary to carry out the  
45 responsibilities of their offices, and to the department of social services, and the  
46 department of health and senior services, and to boards appointed pursuant to  
47 sections 205.968 to 205.990, RSMo, that are providing services to the patient,  
48 resident or client as necessary to report or have investigated abuse, neglect, or  
49 rights violations of patients, residents or clients provided that all such law  
50 enforcement officers, public health officers, department of social services' officers,  
51 department of health and senior services' officers, and boards shall be obligated  
52 to keep such information confidential;

53 (2) Except as otherwise provided in this section, the proceedings, findings,  
54 deliberations, reports and minutes of committees of health care professionals as

55 defined in section 537.035, RSMo, or mental health professionals as defined in  
56 section 632.005, RSMo, who have the responsibility to evaluate, maintain, or  
57 monitor the quality and utilization of mental health services are privileged and  
58 shall not be subject to the discovery, subpoena or other means of legal compulsion  
59 for their release to any person or entity or be admissible into evidence into any  
60 judicial or administrative action for failure to provide adequate or appropriate  
61 care. Such committees may exist, either within department facilities or its  
62 agents, contractors, or vendors, as applicable. Except as otherwise provided in  
63 this section, no person who was in attendance at any investigation or committee  
64 proceeding shall be permitted or required to disclose any information acquired in  
65 connection with or in the course of such proceeding or to disclose any opinion,  
66 recommendation or evaluation of the committee or board or any member thereof;  
67 provided, however, that information otherwise discoverable or admissible from  
68 original sources is not to be construed as immune from discovery or use in any  
69 proceeding merely because it was presented during proceedings before any  
70 committee or in the course of any investigation, nor is any member, employee or  
71 agent of such committee or other person appearing before it to be prevented from  
72 testifying as to matters within their personal knowledge and in accordance with  
73 the other provisions of this section, but such witness cannot be questioned about  
74 the testimony or other proceedings before any investigation or before any  
75 committee;

76 (3) Nothing in this section shall limit authority otherwise provided by law  
77 of a health care licensing board of the state of Missouri to obtain information by  
78 subpoena or other authorized process from investigation committees or to require  
79 disclosure of otherwise confidential information relating to matters and  
80 investigations within the jurisdiction of such health care licensing boards;  
81 provided, however, that such information, once obtained by such board and  
82 associated persons, shall be governed in accordance with the provisions of this  
83 subsection;

84 (4) Nothing in this section shall limit authority otherwise provided by law  
85 in subdivisions (5) and (6) of subsection 2 of section 630.140 concerning access to  
86 records by the entity or agency authorized to implement a system to protect and  
87 advocate the rights of persons with developmental disabilities under the  
88 provisions of 42 U.S.C. Sections 15042 to 15044 and the entity or agency  
89 authorized to implement a system to protect and advocate the rights of persons  
90 with mental illness under the provisions of 42 U.S.C. 10801. In addition, nothing

91 in this section shall serve to negate assurances that have been given by the  
92 governor of Missouri to the U.S. Administration on Developmental Disabilities,  
93 Office of Human Development Services, Department of Health and Human  
94 Services concerning access to records by the agency designated as the protection  
95 and advocacy system for the state of Missouri. However, such information, once  
96 obtained by such entity or agency, shall be governed in accordance with the  
97 provisions of this subsection.

98 4. Anyone who makes a report pursuant to this section or who testifies in  
99 any administrative or judicial proceeding arising from the report shall be immune  
100 from any civil liability for making such a report or for testifying unless such  
101 person acted in bad faith or with malicious purpose.

102 5. Within five working days after a report required to be made pursuant  
103 to this section is received, the person making the report shall be notified in  
104 writing of its receipt and of the initiation of the investigation.

105 6. No person who directs or exercises any authority in a residential  
106 facility, day program or specialized service shall evict, harass, dismiss or retaliate  
107 against a patient, resident or client or employee because he or she or any member  
108 of his or her family has made a report of any violation or suspected violation of  
109 laws, ordinances or regulations applying to the facility which he or she has  
110 reasonable cause to believe has been committed or has occurred.

111 7. Any person who is discharged as a result of an administrative  
112 substantiation of allegations contained in a report of abuse or neglect may, after  
113 exhausting administrative remedies as provided in chapter 36, RSMo, appeal such  
114 decision to the circuit court of the county in which such person resides within  
115 ninety days of such final administrative decision. The court may accept an  
116 appeal up to twenty-four months after the party filing the appeal received notice  
117 of the department's determination, upon a showing that:

118 (1) Good cause exists for the untimely commencement of the request for  
119 the review;

120 (2) If the opportunity to appeal is not granted it will adversely affect the  
121 party's opportunity for employment; and

122 (3) There is no other adequate remedy at law.

630.755. 1. An action may be brought by the department, or by the  
2 attorney general on his own volition or at the request of the department or any  
3 other appropriate state agency, to temporarily or permanently enjoin or restrain  
4 any violation of sections 630.705 to 630.760, to enjoin the acceptance of new

5 residents until substantial compliance with sections 630.705 to 630.760 is  
6 achieved, or to enjoin any specific action or practice of the residential facility or  
7 day program. Any action brought under the provisions of this section shall be  
8 placed at the head of the docket by the court and the court shall hold a hearing  
9 on any action brought under the provisions of this section no less than fifteen  
10 days after the filing of the action.

11       2. Any facility or program which has received a notice of noncompliance  
12 as provided by sections 630.745 to 630.750 is liable to the state for civil penalties  
13 of up to [one hundred] **ten thousand** dollars for each day that noncompliance  
14 continues after the notice of noncompliance is received. The attorney general  
15 shall, upon the request of the department, bring an action in a circuit court of  
16 competent jurisdiction to recover the civil penalty. The court shall have the  
17 authority to determine the amount of civil penalty to be assessed **within the**  
18 **limits set out in this section. Appeals may be taken from the judgment**  
19 **of the circuit court as in other civil cases.**

20       3. **The imposition of any remedy provided for in sections 630.705**  
21 **to 630.760 shall not bar the imposition of any other remedy.**

22       4. Penalties collected for violations of this section shall be  
23 transferred to the mental health earnings fund established pursuant to  
24 section 630.053. Such penalties shall not be considered a charitable  
25 contribution for tax purposes.

26       5. To recover any civil penalty, the moving party shall prove by  
27 a preponderance of the evidence that the violation occurred.

630.925 1. The director of the department shall establish a  
2 mental health fatality review panel to review deaths of all adults in the  
3 care and custody of the department. The panel shall be formed and  
4 shall operate according to the rules, guidelines, and protocols provided  
5 by the department of mental health.

6       2. The panel shall include, but shall not be limited to, the  
7 following:

- 8       (1) A prosecuting or circuit attorney;
- 9       (2) A coroner or medical examiner;
- 10       (3) Law enforcement personnel;
- 11       (4) A representative from the departments of mental health,  
12 social services, health and senior services, and public safety;
- 13       (5) A representative of the Missouri Protection and Advocacy.

14           3. The director of the department of mental health shall organize  
15 the panel and shall call the first organizational meeting of the  
16 panel. The panel shall elect a chairman who shall convene the panel to  
17 meet at least quarterly to review all deaths of clients who are in the  
18 care and custody of the department of mental health, which meet  
19 guidelines for review as set forth by the department of mental health. In  
20 addition, the panel may review at its own discretion any death reported  
21 to it by the medical examiner or coroner, even if it does not meet  
22 criteria for review as set forth by the department. The panel shall  
23 issue a final report, which shall be a public record, of each  
24 investigation to the department of mental health. The final report shall  
25 include a completed summary report form. The form shall be developed  
26 by the director of the department of mental health. The department of  
27 mental health shall analyze the mental health fatality review panel  
28 reports and periodically prepare epidemiological reports which  
29 describe the incidence, causes, location, and other factors. The  
30 department of mental health shall make recommendations and develop  
31 programs to prevent client injuries and deaths.

32           4. The mental health fatality review panel shall enjoy such  
33 official immunity as exists at common law.

630.927. 1. The director of the department of mental health shall  
2 promulgate rules, guidelines, and protocols for the mental health  
3 fatality review panel established pursuant to section 630.925.

4           2. The director shall promulgate guidelines and protocols for  
5 coroner and medical examiners to use to help them to identify  
6 suspicious deaths of clients in the care and custody of the department  
7 of mental health.

8           3. Any rule or portion of a rule, as that term is defined in section  
9 536.010, RSMo, that is created under the authority delegated in this  
10 section shall become effective only if it complies with and is subject to  
11 all of the provisions of chapter 536, RSMo, and, if applicable, section  
12 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable  
13 and if any of the powers vested with the general assembly pursuant to  
14 chapter 536, RSMo, to review, to delay the effective date, or to  
15 disapprove and annul a rule are subsequently held unconstitutional,  
16 then the grant of rulemaking authority and any rule proposed or  
17 adopted after August 28, 2007, shall be invalid and void.

18           4. All meetings conducted, all reports and records made and  
19 maintained pursuant to sections 630.925 and 630.927 by the department  
20 of mental health, or other appropriate persons, officials, or state mental  
21 health fatality review panel shall be confidential and shall not be open  
22 to the general public except for the annual report pursuant to section  
23 630.925.

          630.950. Any employee of a residential facility, day program, or  
2 specialized service operated, funded, or licensed by the department  
3 who reports on or discusses employee job performance for the purposes  
4 of making employment decisions that affect the safety of consumers and  
5 who does so in good faith and without malice shall not be subject to an  
6 action for civil damages as a result thereof, and no cause of action shall  
7 arise against him or her as a result of his or her conduct pursuant to  
8 this section. The attorney general shall defend such persons in any  
9 such action or proceeding.

          630.975. 1. The director of the department of mental health shall  
2 promulgate rules, guidelines and protocols for hospitals and physicians  
3 to use to help them to identify suspicious deaths of clients in the care  
4 and custody of the department of mental health.

          2. The director of the department of mental health shall  
6 promulgate rules for the certification of mental health death  
7 pathologists and shall develop protocols for such pathologists. A  
8 certified mental health death pathologist shall be a board-certified  
9 forensic pathologist or a board-certified pathologist who through  
10 special training or experience is deemed qualified in the area of mental  
11 health fatalities by the department of mental health.

          3. Any hospital, physician, medical professional, mental health  
13 professional, or department of mental health facility shall disclose upon  
14 request all records, medical or social, of any client in the care and  
15 custody of the department of mental health who has died to the mental  
16 health fatality review panel established under section 630.925 to  
17 investigate the person's death. Any legally recognized privileged  
18 communication, except that between attorney and client, shall not  
19 apply to situations involving the death of a client in the care and  
20 custody of the department of mental health.

          630.1100. The department of mental health shall investigate  
2 incidents and reports of vulnerable person abuse using the procedures

3 established in sections 630.163 to 630.167, and, upon substantiation of  
4 the report of vulnerable person abuse, shall promptly report the  
5 incident to the appropriate law enforcement agency and prosecutor. If  
6 the department is unable to substantiate whether abuse occurred due  
7 to the failure of the operator or any of the operator's agents or  
8 employees to cooperate with the investigation, the incident shall be  
9 promptly reported to appropriate law enforcement agencies.

630.1102. 1. When any physician, physician assistant, dentist,  
2 chiropractor, optometrist, podiatrist, intern, resident, nurse, nurse  
3 practitioner, medical examiner, social worker, psychologist, physical  
4 therapist, podiatrist, pharmacist, other health practitioner, minister,  
5 Christian Science practitioner, peace officer, facility administrator,  
6 nurse's aide or orderly in a residential facility, day program or  
7 specialized service operated, funded or licensed by the department or  
8 in a mental health facility or mental health program in which people  
9 may be admitted on a voluntary basis or are civilly detained pursuant  
10 to chapter 632, RSMo; or employee of the departments of social  
11 services, mental health, or health and senior services; or home health  
12 agency or home health agency employee; hospital and clinic personnel  
13 engaged in examination, care, or treatment of persons; in-home services  
14 owner, provider, operator, or employee; law enforcement officer; long-  
15 term care facility administrator or employee; mental health  
16 professional; peace officer; probation or parole officer; or other person  
17 with responsibility for the care of a vulnerable person, as defined by  
18 section 630.005, has reasonable cause to suspect that such a person has  
19 been subjected to abuse or neglect or observes such a person being  
20 subjected to conditions or circumstances that would reasonably result  
21 in abuse or neglect, he or she shall immediately report or cause a  
22 report to be made to the department in accordance with section  
23 630.163. Any other person who becomes aware of circumstances which  
24 may reasonably be expected to be the result of or result in abuse or  
25 neglect may report to the department.

26 2. Any person who knowingly fails to make a report as required  
27 in subsection 1 of this section is guilty of a class A misdemeanor.

28 3. Any person who knowingly files a false report of vulnerable  
29 person abuse or neglect is guilty of a class A misdemeanor.

30 4. Every person who has been previously convicted of or pled

31 guilty to making a false report to the department and who is  
32 subsequently convicted of making a false report under subsection 3 of  
33 this section is guilty of a class D felony.

34 5. Evidence of prior convictions of false reporting shall be heard  
35 by the court, out of the hearing of the jury, prior to the submission of  
36 the case to the jury, and the court shall determine the existence of the  
37 prior convictions.

38 6. Any residential facility, day program or specialized service  
39 operated, funded or licensed by the department that prevents or  
40 discourages a patient, resident or client, employee or other person from  
41 reporting that a patient, resident or client of a facility, program or  
42 service has been abused or neglected shall be subject to loss of their  
43 license issued pursuant to sections 630.705 to 630.760, and civil fines of  
44 up to five thousand dollars for each attempt to prevent or discourage  
45 reporting.

630.1104. Any person, official or institution complying with the  
2 provisions of section 630.1102, in the making of a report, or in  
3 cooperating with the department in any of its activities pursuant to  
4 sections 630.1100 and 630.1102, except any person, official, or  
5 institution violating section 565.210, 565.212, or 565.214, RSMo, shall be  
6 immune from any civil or criminal liability for making such a report,  
7 or in cooperating with the department, unless such person acted  
8 negligently, recklessly, in bad faith, or with malicious purpose.

[630.155. 1. A person commits the crime of "patient,  
2 resident or client abuse or neglect" against any person admitted on  
3 a voluntary or involuntary basis to any mental health facility or  
4 mental health program in which people may be civilly detained  
5 pursuant to chapter 632, RSMo, or any patient, resident or client  
6 of any residential facility, day program or specialized service  
7 operated, funded or licensed by the department if he knowingly  
8 does any of the following:

9 (1) Beats, strikes or injures any person, patient, resident or  
10 client;

11 (2) Mistreats or maltreats, handles or treats any such  
12 person, patient, resident or client in a brutal or inhuman manner;

13 (3) Uses any more force than is reasonably necessary for



14 the proper control, treatment or management of such person,  
15 patient, resident or client;

16 (4) Fails to provide services which are reasonable and  
17 necessary to maintain the physical and mental health of any  
18 person, patient, resident or client when such failure presents either  
19 an imminent danger to the health, safety or welfare of the person,  
20 patient, resident or client, or a substantial probability that death  
21 or serious physical harm will result.

22 2. Patient, resident or client abuse or neglect is a class A  
23 misdemeanor unless committed under subdivision (2) or (4) of  
24 subsection 1 of this section in which case such abuse or neglect  
25 shall be a class D felony.]

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Bill

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